

IN THE SUPREME COURT OF OHIO

VILLAGE OF GEORGETOWN, OHIO

Relator,

v.

BROWN COUNTY BOARD OF  
ELECTIONS

Respondent.

Case No. 2019-1216

ORIGINAL ACTION IN PROHIBITION

EXPEDITED ELECTIONS CASE  
PURSUANT TO S.C.T.PRAC.R. 12.08

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REPLY BRIEF OF RELATOR VILLAGE OF GEORGETOWN, OHIO

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## **I. INTRODUCTION**

Relator Village of Georgetown, Ohio (“Relator” or the “Village”) brought this original action on an expedited basis pursuant to S.Ct.Prac.R. 12.08 as this is an election matter filed within ninety (90) days prior to a pending election on November 5, 2019. The Village requests that a Writ of Prohibition be issued to prevent Respondent Brown County Board of Elections (“Respondent” or the “Board”) from submitting to the November 5, 2019 ballot a question of decreasing an increased rate of levy approved for a continuing period of time related to the provision of fire and EMS services for the Village. The Petition that gave rise to the ballot measure is both procedurally and substantively flawed and should not have been approved or certified by Respondent.

## **II. ARGUMENT IN RESPONSE**

### **A. The Board Acted in an Unreasonable and Arbitrary Fashion in Disregard of R.C. § 3501.011.**

Boards of elections have a statutory duty to certify the validity of petitions. See R.C. § 3501.11(K). A board of elections can invalidate signatures on a petition that do not match signatures in the signers’ voter registration records. In fact, this Court has held that “boards of election are required to compare petition signatures with voter registration cards to determine if the signatures are genuine.” *State ex rel. Yiamouyiannis v. Taft*, 65 Ohio St.3d 205, 209, 602 N.E.2d 644 (1992). Under R.C. § 3501.011(A) and (C), for the purpose of signing relators’ petition, “the legal mark of a registered elector shall be considered to be the mark of that elector as it appears on the elector’s voter registration record.” This mandate is clear from the legislature.

In March 2018, this Court evaluated a situation in which several Boards of Elections invalidated over 100 printed signatures on a petition for governor and

lieutenant governor. See *State ex rel. Heavey v. Husted*, 152 Ohio St. 3d 579, 2018-Ohio-1152, 99 N.E.3d 372. In *Heavey*, this Court found that it was not able to determine whether there was a print/cursive-style mismatch with the signatures contained on the petitions and their corresponding voter registrations. *Id.* In reaching its decision, this Court found that the candidates who sought to have the signatures included failed to demonstrate that a mismatch existed since their voter registration signatures had not been included in the record.

This Court has a history of rejecting printed signatures when the legislature expressly required them to be in cursive-style. See *State ex rel. Steele v. Morrissey*, 103 Ohio St. 3d 555, 2004-Ohio-4960, 815 N.E.2d 1107 and *State ex. rel. Green v. Casey*, 51 Ohio St. 3d 83, 554 N.E.2d 1288 (1990).

Here, Relator has included evidence that the printed “signatures” placed on the Petition by the thirteen (13) signers do *not* match the cursive-style signatures contained on their corresponding voter registrations. See Relator’s Merit Brief at Exhibit J. By submitting the voter registrations for each of the signers and demonstrating that they do not match the signatures placed on the Petition, Relator has satisfied the evidentiary standard sought by the *Heavey* Court to demonstrate that the printed signatures were not the signers’ legal marks.

In this case, the only item the Board had before it when reconsidering its decision not to certify the Petition because of the printed signatures was an undated and unsworn document purporting to include the printed and cursive-style signatures of the thirteen (13) signers, which simply states the following:

**WE THE UNDERSIGNED ELECTORS OF THE VILLAGE OF GEORGETOWN RESPECTFULLY PRINTED OUR NAMES INSTEAD OF SIGNING THE PETITION FOR AN ELECTION ON THE DECREASE OF AN INCREASED RATE OF LEVY APPROVED FOR A CONTINUING PERIOD OF TIME FOR THE GEORGETOWN FIRE AND EMS AT THE ELECTION HELD ON THE 6<sup>TH</sup> DATE OF NOVEMBER 2018.**

See Relator's Merit Brief at Exhibit J. The thirteen (13) signers admitted that they did not sign the Petition when they stated that they printed *instead of signing* the Petition. This statement infers that they made a mistake by failing to follow the instructions provided by the legislature in R.C. § 3501.011, as well as the instructions provided to circulators from the Brown County Board of Elections in Exhibit I to Relator's Merit Brief. This is not a case in which the signers used printed signatures because they had no other cursive-style signature or mark, nor is it a case in which a printed signature was shown by evidence to be regularly used by them for other affairs. Here, the record demonstrates that each of the thirteen (13) signers do in fact have a cursive-style legal signature or mark that they used for their voter registrations and other affairs that they simply did not use when signing the Petition.

Moreover, "the settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision states that it is." *State ex rel. Vickers v. Summit Cty. Council*, 97 Ohio St.3d 204, 2002-Ohio-5583, 777 N.E.2d 830, ¶ 32 quoting *State ex rel. Commt. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 49.; *State ex rel. Commt. for the Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation v. Lakewood*, 100 Ohio St.3d 252, 2003-Ohio-5771, 798 N.E.2d 362, ¶ 30 quoting *State*

*ex rel. Ditmars v. McSweeney*, 94 Ohio St.3d 472, 476, 764 N.E.2d 971 (2002). R.C. § 3501.011 does not expressly permit substantial compliance. Therefore, it requires strict compliance. The thirteen (13) signers failed to follow the statutory requirements of the legislature contained in R.C. § 3501.011; therefore, the Board and this Court must apply a strict compliance standard in the application of this rule, and reject the signatures on the Petition.

In disregarding the clear language of R.C. § 3501.011 and its obligation to strictly apply it, Respondent relies on this Court's decisions in *State ex. rel. Crowl v. Delaware Cty. Bd. of Elections*, 144 Ohio St. 3d 346, 2015-Ohio-4097, 43 N.E.3d 406 and *State ex. rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St. 3d 171, 2014-Ohio-1685, 10 N.E.3d 697. The decisions in these two cases sidestep the clear language the legislature chose to include in R.C. § 3501.011 requiring signatures to be in cursive-style; however, in *Heavey*, this Court acknowledged that a different conclusion could be reached using voter registrations.

Even considering *Crowl* and *Scott*, if it is found that the signatures do not need to be in cursive-style, the Board did not have sufficient evidence before it that the printed signatures contained on the Petition were in fact genuine. In *Scott*, the Board reached the decision to accept the printed signature of an individual based on her sworn testimony and the testimony of other sworn witnesses – not just an undated and unsworn letter signed by the thirteen (13) individuals who printed their names (as was the case here). In *Crowl*, there were affidavits from each of the persons who printed their signatures attesting that the signatures found to be not genuine were in fact genuine. *Crowl*, 144 Ohio St. 3d at 346. Both *Scott* and *Crowl* involved cases where

sworn affidavits or testimony were gathered in order for the Boards of Elections to determine the printed signatures were genuine. Here, the minutes of the August 29, 2019 meeting reflect that the Board only considered an undated and unsworn document in determining that the printed signatures were genuine. See Relator's Merit Brief at Exhibit G.

While *Crowl* appears to reach a similar conclusion as *Scott*, the Court's decision in *Crowl* is clouded by a concurring opinion from Justice O'Connor which notes that the legislature has provided no guidance as to what constitutes enough evidence to validate a signature that does not match the signatory's legal mark. *Crowl*, 144 Ohio St. 3d at 348. The reason for this note by Justice O'Connor is that the clear language of R.C. § 3501.011 demonstrates that the legislature never intended for anything other than a cursive-style signature or legal mark to be considered valid. The Court ignores the legislature's statutory directives contained in R.C. § 3501.011, as well as the Board's instructions provided to candidates and circulators, in order to reach the decisions in *Scott* and *Crowl*.

The Board's decision to accept the thirteen (13) printed signatures on the Petition is contrary to R.C. § 3501.011, and should be reversed by the Court as contrary to the directive of the legislature that signatures must be in cursive-style.

**B. The Board Acted in an Unreasonable and Arbitrary Fashion in Disregard of R.C. § 5705.261.**

Despite Respondent's arguments, Relator has not argued that R.C. § 5705.261 does not apply to the Levy at issue in this case. Respondent's Merit Brief, pp. 11-12. The question is not whether R.C. § 5705.261 applies to this case but rather whether it permits the decrease of a levy that is not an increase in a prior voter-approved levy.

## **1. R.C. § 5705.261 Applies to This Case**

Relator's Merit Brief and applicable law demonstrate that R.C. § 5705.261 does apply to the reduction of a levy brought under R.C. § 5705.19. See Relator's Merit Brief at p. 9-11. "R.C. 5705.261 governs the procedure for submitting a question of a decrease of a voter-approved levy for a continuing period of time to the electorate." *State ex. Rel. Taxpayers for Westerville Schools. v. Franklin County Bd. Of Elections*, 133 Ohio St. 3d 153, 156, 2012-Ohio-4267, 976 N.E.2d 890. "R.C. 5705.261 is a general provision that specifies the procedure affecting several different types of levies authorized in other Revised Code provisions [i.e. R.C. § 5705.261]." *Id.* at 160.

## **2. R.C. § 5705.261 Only Permits the Decrease of an Increased Rate of Levy**

Although R.C. § 5705.261 does apply to the reduction of a levy brought under R.C. § 5705.19, it does not allow for the decrease of a levy that is not an increase of a prior voter-approved levy – which is what the Petition seeks. The Levy at issue in this case was originally brought under R.C. § 5705.19(I). Respondent is correct that R.C. § 5705.19 includes language that a levy brought under subsection (I) may in fact be reduced using R.C. § 5705.261. However, this is only when the petition filed pursuant to R.C. § 5705.261 seeks the decrease of an increase of a prior voter-approved levy. While R.C. § 5705.19(I) allows a fire levy to be reduced pursuant to R.C. § 5705.261, the levy it seeks to reduce must be an increase in the prior voter-approved rate of levy. This is supported by the Court's decision in *State ex. rel. Taxpayers for Westerville Schools. v. Franklin County Bd. Of Elections*, 133 Ohio St. 3d 153, 2012-Ohio-4267, 976 N.E.2d 890.

Here, the Levy is not an increase from a prior voter-approved levy. It is a 2018 fire and EMS levy which was a brand new levy for the purpose of operating a full-time fire and EMS department for the Village. See Affidavit of W. Tyler Thompson at ¶ 5 attached as Exhibit E and incorporated herein by reference (“Thompson Affidavit”).

Respondents seek to distinguish *Westerville* by emphasizing that the levy at issue in *Westerville* was not originally brought under R.C. § 5705.19 like the Levy at issue in this case. However, the fact that the levy in *Westerville* was originally brought under a different statute is not relevant as the *Westerville* Court still interpreted the meaning of R.C. § 5705.261 and reached the conclusion that it does not permit a decrease of an original levy.

In sum, R.C. § 5705.261 allows for the reduction of only certain levies – it only permits the decrease of an *increased* levy, and does not permit a decrease of an *original* levy not previously approved by voters, which is exactly what the Petition seeks to do in this case. Thus, there is no “increase” to trigger R.C. § 5705.261 as no fire and EMS levy existed before the levy was approved by voters in 2018.

The 2009 Attorney General Opinion cited by Respondent<sup>1</sup> predates *Westerville*. *Westerville* was decided in 2012 and was the Court’s first interpretation of the legislative intent behind R.C. § 5705.261 (specifically, that it allows for reductions of *increased* levies, but not *original* levies). In any event, that Attorney General Opinion analyzed whether the right to pursue a decrease of an increased rate of levy pursuant to R.C. 5705.261 applied to levies adopted under R.C. 5705.19(L) – it did not, in any fashion, address the distinction between *original* levies and *increased* levies in the context of

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<sup>1</sup> Respondent neglected to attach this Attorney General Opinion to its Merit Brief in disregard of S.Ct.Prac.R 16.03(B).

R.C. 5705.261. This is because the Attorney General Opinion was issued prior to this Court's bifurcation of original and increased levies in *Westerville*.

**3. The Petition Constitutes an Impermissible "Total Repeal" of the Levy.**

Respondent acknowledges that R.C. § 5705.261 "would not permit a levy decrease to zero, or a total repeal . . ." See Respondent's Merit Brief at p. 13. In this case, the "reduction" of the Levy from 9.5 mills to 2.5 mills is tantamount to a "total repeal." If voters were to reduce the 2018 fire and EMS levy from 9.5 mils to 2.5 mils, Georgetown's Fire and EMS department would be forced to end full-time operations which were instituted as a result of the passage of the 2018 fire and EMS Levy. See Thompson Affidavit at ¶ 6. The arbitrary reduction of the Levy from 9.5 to 2.5 mills does not take into consideration the cost to operate a full-time fire and EMS department. Thus, although not titled as such, the Petition has the practical effect of terminating the Levy altogether and functioning as a total repeal of the 2018 Levy, the purpose of which was to allow the Village to operate a full-time fire and EMS department.

The plain language of R.C. § 5705.19 authorizes levies brought under subsection (I) to be "reduced" pursuant to R.C. § 5705.261— but not "terminated." If the legislature intended to allow for terminations of these levies pursuant to R.C. § 5705.261, it would have included express language allowing for that to occur. This is made evident by the fact that the sentence allowing for *reductions* under R.C. § 5705.261 is followed by a sentence that explicitly allows for *terminations* by the taxing authority:

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be **reduced** pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be **terminated or permanently reduced** by the taxing authority if it adopts a resolution stating that the

continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

(Emphasis added.) R.C. § 5705.19. As demonstrated above, in one sentence, the legislature used the word “reduced,” and, in the very next sentence, used the words “terminated or permanently reduced.” This is a clear manifestation of its intent. It chose to use the word “terminated” in one sentence and not the other. Under the well-established rule of *expressio unius est exclusio alterius*, items not listed are assumed not to be covered by the statute. *See Mercer v. 3M Precision Optics, Inc.*, 181 Ohio App. 3d 307, 310, 2009-Ohio-930, 908 N.E.2d 1016 (“Typically, *expressio unius est exclusio alterius* is applied where . . . items not mentioned were excluded by deliberate choice, not inadvertence.”) The legislature did not intend for R.C. § 5705.261 to serve as a vehicle for the “termination” of a levy brought under R.C. § 5705.19. However, in practicality, that is precisely what is happening in this case.

R.C. § 5705.261 should not be permitted to allow the Petition to terminate the Village’s 2018 fire and EMS levy.

### **III. CONCLUSION**

For all the foregoing reasons, Respondent’s action in certifying the Petition to be included on the ballot for the November 5, 2019 election is contrary to Ohio law and the requested Writ of Prohibition should be granted.

Dated: September 19, 2019

Respectfully submitted,

s/ Joseph J. Braun

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing was served via electronic mail upon the following this 19<sup>th</sup> day of September, 2019:

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s/ Joseph J. Braun

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## APPENDIX

R.C. § 3501.011	<u>Exhibit A</u>
R.C. § 3501.11	<u>Exhibit B</u>
R.C. § 5705.19	<u>Exhibit C</u>
R.C. § 5705.261	<u>Exhibit D</u>
Affidavit of W. Tyler Thompson	<u>Exhibit E</u>

# EXHIBIT A

## **3501.011 Legal mark of registered elector.**

(A) Except as otherwise provided in divisions (B) and (C) of this section, and except as otherwise provided in any section of Title XXXV of the Revised Code to the contrary, as used in the sections of the Revised Code relating to elections and political communications, whenever a person is required to sign or affix a signature to a declaration of candidacy, nominating petition, declaration of intent to be a write-in candidate, initiative petition, referendum petition, recall petition, or any other kind of petition, or to sign or affix a signature on any other document that is filed with or transmitted to a board of elections or the office of the secretary of state, "sign" or "signature" means that person's written, cursive-style legal mark written in that person's own hand.

(B) For persons who do not use a cursive-style legal mark during the course of their regular business and legal affairs, "sign" or "signature" means that person's other legal mark that the person uses during the course of that person's regular business and legal affairs that is written in the person's own hand.

(C) Any voter registration record requiring a person's signature shall be signed using the person's legal mark used in the person's regular business and legal affairs. For any purpose described in division (A) of this section, the legal mark of a registered elector shall be considered to be the mark of that elector as it appears on the elector's voter registration record.

Effective Date: 09-26-2003 .

# EXHIBIT B

## **3501.11 Board duties.**

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

- (A) Establish, define, provide, rearrange, and combine election precincts;
- (B) Fix and provide the places for registration and for holding primaries and elections;
- (C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;
- (D) Appoint and remove its director, deputy director, and employees and all registrars, precinct election officials, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;
- (E) Make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters;
- (F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;
- (G) Provide for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided in division (G) of section 3501.17 and divisions (F) and (G) of section 3505.062 of the Revised Code;
- (H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;
- (I) Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.
- (J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state;
- (K)
  - (1) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;
  - (2) Examine each initiative petition, or a petition filed under section 307.94 or 307.95 of the Revised Code, received by the board to determine whether the petition falls within the scope of authority to enact via initiative and whether the petition satisfies the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.
- (L) Receive the returns of elections, canvass the returns, make abstracts of them, and transmit those abstracts to the proper authorities;
- (M) Issue certificates of election on forms to be prescribed by the secretary of state;
- (N) Make an annual report to the secretary of state, on the form prescribed by the secretary of state, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, expenditures made, and other data required by the secretary of state;

- (O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;
- (P) Perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state;
- (Q) Investigate and determine the residence qualifications of electors;
- (R) Administer oaths in matters pertaining to the administration of the election laws;
- (S) Prepare and submit to the secretary of state, whenever the secretary of state requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;
- (T) Establish and maintain a voter registration database of all qualified electors in the county who offer to register;
- (U) Maintain voter registration records, make reports concerning voter registration as required by the secretary of state, and remove ineligible electors from voter registration lists in accordance with law and directives of the secretary of state;
- (V) Give approval to ballot language for any local question or issue and transmit the language to the secretary of state for the secretary of state's final approval;
- (W) Prepare and cause the following notice to be displayed in a prominent location in every polling place:

#### NOTICE

Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with law.

(X) In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

(Y) Assist each designated agency, deputy registrar of motor vehicles, public high school and vocational school, public library, and office of a county treasurer in the implementation of a program for registering voters at all voter registration locations as prescribed by the secretary of state. Under this program, each board of elections shall direct to the appropriate board of elections any voter registration applications for persons residing outside the county where the board is located within five days after receiving the applications.

(Z) On any day on which an elector may vote in person at the office of the board or at another site designated by the board, consider the board or other designated site a polling place for that day. All requirements or prohibitions of law that apply to a polling place shall apply to the office of the board or other designated site on that day.

(AA) Perform any duties with respect to voter registration and voting by uniformed services and overseas voters that are delegated to the board by law or by the rules, directives, or advisories of the secretary of state.

Amended by 131st General Assembly File No. TBD, HB 463, §1, eff. 4/6/2017.

Amended by 130th General Assembly File No. 47, SB 109, §1, eff. 2/25/2014.

Amended by 129th General Assembly File No. 105, SB 295, §1, eff. 8/15/2012.

Amended by 129th General AssemblyFile No.40, HB 194, §1 Made subject to referendum in the Nov. 6, 2012 election. The version of this section thus amended was repealed by 129th General AssemblyFile No.105, SB 295, §1, eff. 8/15/2012.

Amended by 128th General AssemblyFile No.29, HB 48, §1, eff. 7/2/2010.

Effective Date: 08-28-2001; 05-02-2006; 2007 HB119 09-29-2007 .

# EXHIBIT C

## **5705.19 Resolution relative to tax levy in excess of ten-mill limitation.**

This section does not apply to school districts, county school financing districts, or lake facilities authorities.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

- (A) For current expenses of the subdivision, except that the total levy for current expenses of a detention facility district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.65 and 2152.41 of the Revised Code shall not exceed four mills;
- (B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;
- (C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;
- (D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;
- (E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;
- (F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;
- (G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;
- (H) For parks and recreational purposes;
- (I) For providing and maintaining fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, or other fire equipment and appliances, buildings and sites therefor, or sources of water supply and materials therefor, for the establishment and maintenance of lines of fire-alarm communications, for the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, for the purchase of ambulance equipment, for the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company, or for the payment of other related costs;
- (J) For providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, for the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.33 of the Revised Code, for the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, for the provision of ambulance or emergency medical services operated by a police department, or for the payment of other related costs;
- (K) For the maintenance and operation of a county home or detention facility;
- (L) For community developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that such levies shall be subject to the procedures and requirements of section 5705.222 of the Revised Code;

- (M) For regional planning;
- (N) For a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or both of those sections;
- (O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;
- (P) For maintaining and operating sewage disposal plants and facilities;
- (Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code;
- (R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;
- (S) For the prevention, control, and abatement of air pollution;
- (T) For maintaining and operating cemeteries;
- (U) For providing ambulance service, emergency medical service, or both;
- (V) For providing for the collection and disposal of garbage or refuse, including yard waste;
- (W) For the payment of the police officer employers' contribution or the firefighter employers' contribution required under sections 742.33 and 742.34 of the Revised Code;
- (X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;
- (Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;
- (Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;
- (AA) For the maintenance and operation of a free public museum of art, science, or history;
- (BB) For the establishment and operation of a 9-1-1 system, as defined in section 128.01 of the Revised Code;
- (CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.
- (DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;
- (EE) For the creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code, or to the extent that the expenses of a county land reutilization corporation organized under Chapter 1724. of the Revised Code are found by the board of county commissioners to constitute the promotion of economic development, for the payment of such operations and expenses;
- (FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to

section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;

(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a township for these greenspace purposes may subsequently be used for recreational purposes if the board of township trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a township that had a population, at the time it passed its first greenspace levy, of more than thirty-eight thousand within a county that had a population, at that time, of at least eight hundred sixty thousand.

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code;

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a municipal corporation or a township.

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties.

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code;

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code;

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold, and the operating expenses of, agricultural fairs operated by a county agricultural society or independent agricultural society under Chapter 1711. of the Revised Code. This division applies only to a county.

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements;

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section.

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county.

(TT) For the maintenance and operation of a facility that is organized in whole or in part to promote the sciences and natural history under section 307.761 of the Revised Code.

(UU) For the creation and operation of a county land reutilization corporation and for any programs or activities of the corporation found by the board of directors of the corporation to be consistent with the purposes for which the corporation is organized;

(VV) For construction and maintenance of improvements and expenses of soil and water conservation district programs under Chapter 940. of the Revised Code;

(WW) For the OSU extension fund created under section 3335.35 of the Revised Code for the purposes prescribed under section 3335.36 of the Revised Code for the benefit of the citizens of a county. This division applies only to a county.

(XX) For a municipal corporation that withdraws or proposes by resolution to withdraw from a regional transit authority under section 306.55 of the Revised Code to provide transportation services for the movement of persons within, from, or to the municipal corporation;

(YY) For any combination of the purposes specified in divisions (NN), (VV), and (WW) of this section. This division applies only to a county.

(ZZ) For any combination of the following purposes: the acquisition, construction, improvement, or maintenance of buildings, equipment, and supplies for police, firefighting, or emergency medical services; the construction, reconstruction, resurfacing, or repair of streets, roads, and bridges; or for general infrastructure projects. This division applies only to a township or municipal corporation.

(AAA) For any combination of the purposes specified in divisions (G), (K), (N), (O), (P), (X), (BB), and (MM) of this section, for the acquisition, construction or maintenance of county facilities, or for the acquisition of or improvements to land. This division applies only to a county.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.65 and 2152.41 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or under both of those sections.

(3) When the additional rate is for either of the following, the increased rate may be for a continuing period of time:

(a) For the purposes set forth in division (I), (J), (U), or (KK) of this section;

(b) For the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose or purposes set forth in division (D), (G), (H), (T), (Z), (CC), or (PP) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

(5) When the increase is for the purpose set forth in division (ZZ) or (AAA) of this section, the tax levy may be for any number of years not exceeding ten.

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.65 and 2152.41 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

A resolution adopted by the legislative authority of a municipal corporation that is for the purpose in division (XX) of this section may be combined with the purpose provided in section 306.55 of the Revised Code, by vote of two-thirds of all members of the legislative authority. The legislative authority may certify the resolution to the board of elections as a combined question. The question appearing on the ballot shall be as provided in section 5705.252 of the Revised Code.

A levy for the purpose set forth in division (BB) of this section may be imposed in all or a portion of the territory of a subdivision. If the 9-1-1 system to be established and operated with levy funds excludes territory located within the subdivision, the resolution adopted under this section, or a resolution proposing to renew such a levy that was imposed in all of the territory of the subdivision, may describe the area served or to be served by the system and specify that the proposed tax would be imposed only in the areas receiving or to receive the service. Upon passage of such a resolution, the board of elections shall submit the question of the tax levy only to those electors residing in the area or areas in which the tax would be imposed. If the 9-1-1 system would serve the entire subdivision, the resolution shall not exclude territory from the tax levy.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election

When the electors of a subdivision or, in the case of a qualifying library levy for the support of a library association or private corporation, the electors of the association library district or, in the case of a 9-1-1 system levy serving only a portion of the territory of a subdivision, the electors of the portion of the subdivision in which the levy would be imposed have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

Amended by 132nd General Assembly File No. TBD, HB 500, §1, eff. 3/22/2019.

Amended by 132nd General Assembly File No. TBD, HB 122, §1, eff. 8/1/2018.

Amended by 131st General Assembly File No. TBD, HB 483, §101.01, eff. 10/12/2016.

Amended by 131st General Assembly File No. TBD, HB 158, §1, eff. 10/12/2016.

Amended by 131st General Assembly File No. TBD, HB 413, §1, eff. 9/28/2016.

Amended by 131st General Assembly File No. TBD, HB 277, §1, eff. 6/28/2016.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 166, HB 360, §1, eff. 12/20/2012.

Amended by 129th General Assembly File No. 140, SB 321, §1, eff. 6/26/2012, op. 1/1/2013.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 131st General Assembly File No. TBD, HB 413, §3, eff. 7/7/2010.

Amended by 128th General Assembly File No. 29, HB 48, §1, eff. 7/2/2010.

Effective Date: 03-11-2004; 03-30-2006; 2008 HB385 09-12-2008; 2008 SB353 04-07-2009 .

**Related Legislative Provision:** See 131st General Assembly File No. TBD, HB 64, §812.70.

See 131st General Assembly File No. TBD, HB 64, §812.70.

# **EXHIBIT D**

## **5705.261 Election on decrease of an increased rate of levy approved for a continuing period of time.**

The question of decrease of an increased rate of levy approved for a continuing period of time by the voters of a subdivision or, in the case of a qualifying library levy, the voters of the library district or association library district, may be initiated by the filing of a petition with the board of elections of the proper county not less than ninety days before the general election in any year requesting that an election be held on such question. Such petition shall state the amount of the proposed decrease in the rate of levy and shall be signed by qualified electors residing in the subdivision, library district, or association library district equal in number to at least ten per cent of the total number of votes cast in the subdivision, library district, or association library district for the office of governor at the most recent general election for that office. Only one such petition may be filed during each five-year period following the election at which the voters approved the increased rate for a continuing period of time.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the subdivision, library district, or association library district at the succeeding general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision, library district, or association library district for county offices. Notice of the election shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. The notice shall state the purpose, the amount of the proposed decrease in rate, and the time and place of the election. The form of the ballot cast at such election shall be prescribed by the secretary of state. The question covered by such petition shall be submitted as a separate proposition but it may be printed on the same ballot with any other propositions submitted at the same election other than the election of officers. If a majority of the qualified electors voting on the question of a decrease at such election approve the proposed decrease in rate, the result of the election shall be certified immediately after the canvass by the board of elections to the appropriate taxing authority, which shall thereupon, after the current year, cease to levy such increased rate or levy such tax at such reduced rate upon the duplicate of the subdivision, library district, or association library district. If notes have been issued in anticipation of the collection of such levy, the taxing authority shall continue to levy and collect under authority of the election authorizing the original levy such amounts as will be sufficient to pay the principal of and interest on such anticipation notes as the same fall due.

In the case of a levy for the current expenses of a qualifying school district and of partnering community schools imposed under section 5705.192, division (B) of section 5705.21, division (C) of section 5705.212, or division (J) of section 5705.218 of the Revised Code for a continuing period of time, the rate allocated to the school district and to partnering community schools shall each be decreased by a number of mills per dollar that is proportionate to the decrease in the rate of the levy in proportion to the rate at which the levy was imposed before the decrease.

Amended by 130th General Assembly File No. 38, HB 167, §1, eff. 7/15/2013.

Amended by 129th General Assembly File No. 140, SB 321, §1, eff. 6/26/2012, op. 1/1/2013.

Amended by 129th General Assembly File No. 143, HB 525, §1, eff. 10/1/2012.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 29, HB 48, §1, eff. 7/2/2010.

Effective Date: 11-20-1996; 06-01-2006

**Related Legislative Provision:** See 129th General Assembly File No. 143, HB 525, §3.

# EXHIBIT E

IN THE SUPREME COURT OF OHIO

## VILLAGE OF GEORGETOWN, OHIO

Relator,

v.

**BROWN COUNTY BOARD OF  
ELECTIONS**

**Respondent.**

Case No. 2019-1216

## ORIGINAL ACTION IN PROHIBITION

**EXPEDITED ELECTIONS CASE  
PURSUANT TO S.C.T.PRAC.R. 12.08**

**AFFIDAVIT OF W. TYLER THOMPSON IN SUPPORT OF REPLY BRIEF OF  
RELATOR VILLAGE OF GEORGETOWN, OHIO**

STATE OF OHIO )  
COUNTY OF BROWN ) SS:  
 )

Affiant W. Tyler Thompson, after being first duly sworn and cautioned, deposes and states from his personal knowledge and belief as follows:

1. I am over the age of eighteen years, under no legal disabilities, and have personal knowledge of all matters asserted herein.
2. I am the Administrator of the Village of Georgetown, Ohio, the Relator in this action ("Georgetown").
3. Georgetown's Fire and EMS Department is currently funded by a 9.5 mil fire and EMS levy that was approved by voters in 2018.
4. Georgetown previously had a 2.4 mil fire-only levy that was approved in 2005 and renewed by voters in 2015.

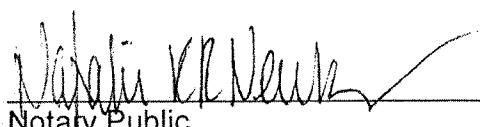
5. The 2018 fire and EMS levy was a new levy that was separate and distinct from the 2015 levy. Its purpose was to begin the operation of a full time fire and EMS department for Georgetown.
6. If voters were to reduce the 2018 fire and EMS levy from 9.5 mils to 2.5 mils, Georgetown's Fire and EMS department would be forced to end full-time operations which were instituted as a result of the passage of the 2018 fire and EMS Levy.

Further, Affiant sayeth naught.



W. Tyler Thompson, Village Administrator

Sworn to and subscribed before me, a Notary Public, this 19<sup>th</sup> day of September, 2019.



Natalie K. R. Newberry  
Notary Public

Commission Expiration Date: November 21, 2019



Natalie K. R. Newberry  
Notary Public, State of Ohio  
My Commission Expires  
November 21, 2019